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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,712	10/02/2003	Jason S. Erdie	EPT-14902	9172

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EXAMINER
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ELKINS, GARY E

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/677,712

Applicant(s)

ERDIE, JASON S.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20040107, 20040720</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-7 and 15-19 in the reply filed on 14 April 2005 is acknowledged. Non-elected claims 8-14 have been cancelled in the response.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 7 and 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Robinson, Jr. Robinson, Jr. discloses an end cap including barbs 17 and fluted edge 18. With respect to claims 15 and 18, no significant distinction is seen between the container being claimed and that shown in Robinson, Jr. as a result of the method of production where the barb is formed after insertion of the end cap as opposed to prior to insertion as disclosed in Robinson, Jr. The patentability of a product is not dependent upon the intended method of production.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 7 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Ambrust publication in view of Rose. The Ambrust publication discloses an end cap for

insertion into a fiber shipping tube and includes a fluted and serrated upper edge. The Ambrust publication does not disclose barbs projecting away from the sidewall and engaging the inside of fiber container. Rose teaches that it is known to secure an end cap (17) to the inside of a fiber tube using barbs engaging the inner side wall. It would have been obvious to make the end cap of the Ambrust publication with barbs as taught by Rose to provide a more positive securement of the end cap. With respect to claims 15 and 18, no significant distinction is seen between the container being claimed and that of modified Ambrust as a result of the method of production where the barb is formed after insertion of the end cap as opposed to prior to insertion. The patentability of a product is not dependent upon the intended method of production.

6. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in paragraph 5 above, and further in view of Curry. Modified Ambrust fails to evidence formation of the barbs in two rings (cl. 4) and, with respect to claim 5, formation of the barbs within one ring offset from the barbs within the second ring. Curry teaches that it is known to form a joint securing a metal piece to a fiberboard container wall using two sets of barbs where the barbs are offset within each set. It would have been obvious to secure the end cap of modified Ambrust by forming the barbs in two rows as taught by Curry to provide a stronger connection of the metal to the fiber wall.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Robinson, Jr. as applied to claim 1 in paragraph 3 above, or alternatively over the Ambrust publication in view of Rose as applied to claim 1 in paragraph 5 above, and further in view of Bergstrom. Each of Robinson, Jr. and modified Ambrust evidences all structure of the claimed end cap except formation of the end cap from cold rolled drawn steel. Bergstrom teaches that it is known to

make an end closure on a container from cold rolled drawn steel. It would have been obvious to make the end cap in either Robinson, Jr. or modified Ambrust using cold rolled drawn steel as taught by Bergstrom to provide a strong rigid end cap where the engagement elements are less likely to bend under stress.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.


In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

Art Unit: 3727

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

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26 June 2005